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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/901,338	07/28/97	KEESMAN G	PHB-33946A

LM02/1116

LAURIE E GATHMAN
U S PHILIPS CORPORATION
580 WHITE PLAINS ROAD
TARRYTOWN NY 10591

EXAMINER	
RAO, A	
ART UNIT	**PAPER NUMBER**
2713	37

DATE MAILED: 11/16/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/901,338	Keesman
Examiner	**Group Art Unit**
Anand Rao	2713

☒ Responsive to communication(s) filed on *Nov 2, 1999*

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *1-12 and 14* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-12 and 14* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on *Jul 28, 1997* is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 11/02/99 as Paper 34 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No.08/901,338 is acceptable and a CPA has been established. An action on the CPA follows.

Response to Request for Reconsideration

2. Applicant's arguments filed on 11/02/99 in Paper 35 with respect to the Examiner's pending rejection of claims 1-12, and 14 under 35 U.S.C. § 102(e) as being anticipated by Kirayama have been fully considered but they are not persuasive.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-12 and 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kirayama, as was set forth in the Office Action mailed as Paper 23 mailed on 6/23/98, and made final in the Office Action mailed on 2/2/99 as Paper 28, and further discussed in the Advisory Action mailed on 11/02/99 as Paper 32.

The Applicant presents one argument contending the Examiner's rejection of claims 1-12 and 14 rejected under 35 U.S.C. § 102(e) as being anticipated by Kirayama, as was set forth in the

Office Action of 6/23/98 as Paper 23, made final in the Office Action mailed on 2/2/99 as Paper 28, and further discussed in the Advisory Action mailed on 11/02/99 as Paper 32. However, after carefully reviewing the argument, the Examiner must respectfully disagree and maintain the grounds of rejection for the reasons that follow.

Before getting to the arguments presented, the Examiner must respectfully point out that the Applicant has not correctly pointed out where the Examiner had derived the various terms for discussion in the mathematical model at issue. The Applicant affirms that the Examiner identified these terms in the final Office Action of Paper 28 mailed on 2/2/99 (Paper 36: page 2, lines 19-23), however, it is duly noted that terms (B1) and (B2) only appeared in the previously identified in the Advisory Action of mailed on 6/30/99 (Paper 32: page 3, lines 1-3). Secondly, in that Advisory Action (Paper 32: page 3, lines 1-3), (B1) is established as buffer input write-in rate, and (B2) is established as the buffer readout rate; and not the buffer input rate, and the buffer write-in bit rate as presented by the Applicant (Paper 36: page 3, line 1). It is unclear if this mis-interpretation of the terms has lead the Applicant astray the seemingly erroneous conclusions arrived at and argued by the Applicant.

In order to support the Applicant's stance that Kirayama fails to disclose "...deriving a second bit rate as a percentage of the detected bit rate, which percentage changes inversely to changes in the detected bit rate..." limitations of the claims (Paper 36: page 4, lines 2-8), the Applicant argues that the Examiner's mathematical model characterizing Kirayama's rate of encoding is not equal to (B1), wherein (B1) has been already discussed in prior Office Actions mentioned above, but that said rate of encoding (B1) is normally constant and related to the

constant clocking speed of the encoder. The Examiner respectfully disagrees. One cannot blindly infer that the rate of encoding is constant based upon a supposedly constant clocking speed of the encoder as the Applicant has done (Paper 36: page 3, lines 4-8). In particular, while the encoder's clocking speed might be constant, the number of bits produced for each clocked out operation will be different, and that will vary from block to block, much less frame to frame (Kirayama: column 5, lines 6-10) due to quantization width variation (Kirayama: column 11, lines 35-38). This is why the Examiner's model is correct, and why the Applicant's contention is not persuasive. The number of bits produced is not reliant solely upon the complexity of each individual frame as the Applicant purports (Paper 36: page 3, lines 9-11), but also upon the feedback signals of buffer occupancy (Kirayama: column 11, lines 35-47). It is even noted the feedback signals can trigger changes in the clocking such that the clocking rate of the encoder can modified or even stopped (Kirayama: column 6, lines 25-35). Thus the encoder output bit rate is effected by the clocking speed or overall processing speeds, and not solely reliant upon the bit-produced as the Applicant as suggested. (Paper: 36: page 3, lines 19-21). As such, the Examiner maintains that Kirayama does disclose "...deriving a second bit rate as a percentage of the detected bit rate, which percentage changes inversely to changes in the detected bit rate..." limitations of the claims (Paper 36: page 4, lines 2-8), as discussed above.

Conclusion

5. This is a CPA of applicant's earlier Application No. 08/901,338. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the

grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand S. Rao whose telephone number is (703)-305-4813.

ANDY RAO
PRIMARY EXAMINER

asr

November 12, 1999